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18 **INTEGRATED WASTE MANAGEMENT BOARD**

19 **STATE OF CALIFORNIA**

20 *In Re: California Integrated Waste Management*
21 *Board's Processing of Browning Ferris*
22 *Industries's Application For Solid Waste*
23 *Facilities Permit For Sunshine Canyon Landfills,*
24 *Sylmar, California*

Solid Waste Information Systems (SWIS)
No. 19-AA-2000

25 **COUNTY OF LOS ANGELES' LOCAL 26 ENFORCEMENT AGENCY'S AND CITY 27 OF LOS ANGELES' LOCAL 28 ENFORCEMENT AGENCY'S JOINT LEGAL BRIEF; CIWMB HEARING PANEL**

California Public Resources Code
§§ 44307 and 44309

29 **I. Summary**

30 Pursuant to California Public Resources Code ("PRC") Sections 44307 and/or 44309, as
31 applicable, the local enforcement agencies of the County of Los Angeles and the City of Los
32 Angeles respectfully request the Hearing Panel for an order under PRC Section 45017 directing the
33 California Integrated Waste Management Board (the "CIWMB") and its staff to cease acting as
34 enforcement agency for the Sunshine Canyon Landfills and cease the processing of an application
35 for a solid waste facilities permit submitted by the Landfills' operator, Browning Ferris Industries
36 of California, Inc. ("BFI"). Instead, the order should direct the CIWMB to refer the permit

1 application to the new Sunshine Canyon Local Enforcement Agency (the "SCL-LEA") that the
2 City and County are voluntarily forming and certifying, at the behest of BFI, under a Joint Powers
3 Agreement ("JPA") being entered into for a new SCL-LEA to assist BFI in its desire to operate the
4 Sunshine Canyon Landfills as one combined operation. Alternatively, the Hearing Panel's order
5 should direct the CIWMB to deem BFI's application as incomplete and refer it back to BFI to
6 address deficiencies raised by the City LEA and County LEA in comments provided to the
7 CIWMB.

8 While certified and in good standing, local enforcement agencies (the "LEAs") have
9 exclusive authority within their jurisdictions to issue permits and enforce the State's Minimum
10 Standards, including with regard to the CIWMB. It is undisputed that the County LEA and the
11 City LEA are certified and in good standing and that each of the two existing Sunshine Canyon
12 Landfills are included in their respective jurisdictions and Enforcement Program Plans (the
13 "EPPs"). In addition, before appointing itself as EA at Sunshine Canyon, and by doing so
14 displacing the City LEA and County LEA, the CIWMB must follow the due process requirements
15 required of the CIWMB under Sections 18086 and 18087 of Title 14 of the California Code of
16 Regulations (the "CCR"). As the CIWMB has not fulfilled these requirements, it lacks legal
17 authority to process an application from BFI for a solid waste facilities permit at Sunshine Canyon.

18 In addition, before the CIWMB is able to legally assume the role as EA at the Sunshine
19 Canyon Landfills, the CIWMB must first obtain from the Los Angeles County Board of
20 Supervisors and the Los Angeles City Council agreements required of the CIWMB pursuant to
21 PRC Section 43212.1 or 43310.1, which agreements have not yet been obtained.

22 Last, the CIWMB takes the position that final City and County land-use approvals for a
23 combined Sunshine Canyon Landfill create a "regulatory void" which the CIWMB must fill by
24 law. However, BFI must in reality still obtain final approvals to allow the combined Landfills to
25 operate in that BFI must still complete conditions under BFI's land-use grants, so that no said void
26 could exist at this time. Moreover, since BFI cannot legally utilize a solid waste facilities permit
27 for merged operations at the Sunshine Canyon Landfills until BFI fulfills those Land Use
28 Conditions (as defined below), BFI's application for a combined permit is premature.

II. Factual Background

A. Status of Current Landfills and Current SWF Permits:

BFI is currently the operator of two adjacent Class III Sanitary Refuse Disposal Facilities ("Landfills") located in the vicinity of Sylmar, California. One Landfill is located within the unincorporated territory of the County of Los Angeles (the "County Landfill"). The second Landfill is located within the jurisdictional limits of the City of Los Angeles (the "City Landfill").

On April 7, 1992, the Los Angeles County Board of Supervisors designated the County of Los Angeles Solid Waste Management Program, currently within the Los Angeles County Department of Public Health, formerly known as the Los Angeles County Department of Health Services, pursuant to 14 CCR 18050, as the LEA for the County of Los Angeles (the "County LEA"). The CIWMB granted the County LEA certification pursuant to PRC Sections 43200, *et. seq.*, and related regulations, on July 16, 1992. Since that time, the County LEA has fulfilled all of its legal requirements and remains certified and in good standing.

The County Landfill is currently located within the unincorporated territory of the County, within the area where the County LEA was designated as LEA on July 16, 1992, when the CIWMB granted certification. Consequently, the enforcement program plan (the "EPP") which was approved by the CIWMB as part of the certification process for the County LEA includes the County Landfill. [See Footnote 2 of 1-17 Rauh Ltr. (as defined below).] Since 1996, BFI has conducted operations at the County Landfill pursuant to Solid Waste Facilities Permit No. 19AA0853 (the "County SWF Permit"), which the County LEA issued with the concurrence of the CIWMB.

In March of 1992 the City of Los Angeles City Council designated its Environmental Affairs Department pursuant to 14 CCR 18050 as the LEA for the City of Los Angeles (the "City LEA"). The CIWMB granted the City LEA certification pursuant to California Public Resources Code Sections 43200, *et. seq.*, and related regulations, on August 1, 1992. Since that time, the City LEA has fulfilled all of its legal requirements and remains certified and in good standing.

The City Landfill is currently located within the incorporated boundary of the City within the area where the City LEA was designated as LEA on August 1, 1992, when the CIWMB

1 granted certification. Consequently, the EPP for the City LEA which was approved by the
2 CIWMB as part of the certification process for the City LEA includes the City Landfill. [See
3 Footnote 2 of 1-17 Rauh Ltr.] Since 2005, BFI has conducted operations within the City Landfill
4 pursuant to Solid Waste Facilities Permit No. 19-AR-0002 (the "City SWF Permit"), which the
5 City LEA issued with the concurrence of the CIWMB.

6 **B. BFI's Desire To Combine Landfills:**

7 BFI now desires to operate the County Landfill together with the City Landfill as one
8 combined refuse facility (the "Merged Operations") in order to achieve savings based on
9 economies of scale as well as to obtain a significantly greater tonnage capacity for its disposal
10 business than is currently feasible under the two separate Landfills.

11 BFI therefore applied for and is in the process of obtaining final approvals under County of
12 Los Angeles Conditional Use Permit 00-194-(5) (the "County CUP") and City of Los Angeles
13 Ordinance 172933 (the "City Zoning Amendment"). That is, both the County CUP and the City
14 Zoning Amendment allow the Combined Operations to commence if BFI is able to fulfill certain
15 conditions (the "Land Use Conditions") which are specified in each of the County CUP and the
16 City Zoning Amendment.

17 BFI desires to conduct the Combined Operations under one single solid waste facilities
18 permit (the "Combined SWF Permit") in lieu of the County SWF Permit and the City SWF Permit.
19 However, BFI does not want the Combined SWF Permit to be issued, regulated or administered by
20 both the County LEA and the City LEA. Rather, BFI has requested a single LEA for the
21 Combined Operations. In addition, the CIWMB opines that a Combined SWF Permit cannot be
22 legally regulated or administered by two separate LEAs, either independently or through an
23 agreement between the two LEAs. The County LEA and the City LEA are not currently taking a
24 position with respect to the CIWMB's opinion.

25 **C. City and County Efforts To Create Combined LEA:**

26 Nonetheless, as the County and the City both wish to continue to participate in the
27 on-going regulation of the respective Landfill in their respective jurisdictions, in response to BFI's
28 request for a single LEA for the Merged Operations, the County LEA and the City LEA have been

1 voluntarily working cooperatively on a Joint Exercise of Powers agreement pursuant to chapter 5
2 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code (the "JPA"), to
3 form a single Sunshine Canyon Landfill LEA (the "SCL-LEA") to regulate both Landfills as one
4 and to submit to the CIWMB for certification.

5 That is, there is no legal obligation that the City and the County withdraw the designations
6 of their respective LEAs for Sunshine Canyon and form and certify a new SCL-LEA. However, in
7 the spirit of cooperation and to provide BFI with the opportunity it is asking to attempt more
8 efficient Merged Operations, The JPA is scheduled for a vote of the Los Angeles City Council on
9 April 25, 2008 and of the Los Angeles County Board of Supervisors on May 6, 2008. A copy of
10 the draft JPA being considered is attached hereto as "Attachment 1". Following formation and
11 certification of the SCL-LEA, the County LEA and the City LEA nonetheless intend to continue to
12 act as enforcement agencies in their jurisdictions for all facilities except Sunshine Canyon.

13 Furthermore, since at least the Fall of 2007, the County LEA and the City LEA have been
14 diligently working together and with staff of the CIWMB and have devoted significant resources
15 to prepare jointly the EPP for the SCL-LEA. A draft of said EPP is also included in Attachment 1.

16 **D. BFI's Combined SWF Permit Application to CIWMB:**

17 However, in spite of the City and County's efforts and cooperation to form the new SCL-
18 LEA, and in spite of the City and the County informing the CIWMB and BFI of BFI's failure to
19 fulfill BFI's Land Use Conditions, in its desire to further expedite the processing of a Combined
20 SWF Permit without waiting for the formation and certification of the new SCL-LEA, in January,
21 2008, BFI submitted an application for a Combined SWF Permit directly to the CIWMB.

22 Consequently, the CIWMB provided the City and the County with a January 17, 2008,
23 correspondence, attached hereto as "Attachment 2" (the "1-17 Rauh Ltr."), detailing the CIWMB's
24 decision to act as EA to process BFI's January, 2008, application for a Combined SWF Permit.
25 Said letter explains that because BFI advised the CIWMB that BFI obtained full land use
26 approvals from both the City and the County for "merged operations" of the Landfills, due to the
27 lack of an enforcement agency that can issue a Combined SWF Permit, the CIWMB is now forced
28 by law to process BFI's application. [See 1-17 Rauh Ltr., p. 4-5 .] More particularly, the 1-17

1 Rauh Ltr. explains that because the City and County have reached an "impasse" in their attempt to
2 designate an LEA for the merged landfill, the CIWMB is now obligated to fill the resulting
3 "enforcement agency void" for the processing of the application for a Combined SWF Permit in
4 favor of BFI. [Id.] As shown above, the City and County are nonetheless not at an impasse.

5 On February 6, 2008, BFI supplemented its January application for a Combined SWF
6 Permit to allow BFI to comply with the requirements of 27 CCR 21570. On March 7, 2008 the
7 CIWMB determined to accept and commence processing BFI's application package pursuant to 27
8 CCR 21650. The County LEA, City LEA and Regional Water Quality Control Board provided
9 comments to the application submitted by BFI, including expressing concerns with the BFI's
10 engineering slope stability analysis required of BFI by law.

11 Other comments included BFI's failure to meet the conformance finding ("Conformance
12 Finding") information required by 27 CCR 21570, including with regard to the Los Angeles
13 County Integrated Waste Management Plan (the "CIWMP"), and including pursuant to goals,
14 policies and procedures developed and adopted by the Los Angeles County Integrated Waste
15 Management Task Force (the "Task Force") pursuant to PRC Section 40950 and relevant
16 regulations. More particularly, sections 18756 and 18776 through 18788 of Title 14 of the CCR
17 require that the Merged Operations meet certain requirements of the local Siting Element and
18 Summary Plan which form part of the CIWMP. Requirements that BFI must still meet include
19 public comment and consideration before the Task Force. BFI is also obligated to obtain a
20 Conformance Finding as a Land Use Condition under the County CUP.

21 Consequently, acknowledging some of the deficiencies noted by the County LEA, City
22 LEA and Regional Board, the CIWMB informed BFI that it "may require amendment to the
23 application and additional review." In spite of these deficiencies, we are informed that the CIWMB
24 intends to complete the processing of the application to meet BFI's demands and that the CIWMB
25 intends to issue the Combined SWF Permit under the strict time line provided under the PRC and
26 the CCR.

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1 **III. Issues for Hearing Panel to Review and Consider**

2 **A. The CIWMB Need Not Act As Enforcement Agency for a Facility When LEAs**
3 **Exist For the Jurisdiction:**

4 Section 43202 of the California Public Resources Code states: ". . . If an enforcement
5 agency is not designated and certified, the board [CIWMB], in addition to its other powers and
6 duties, shall be the enforcement agency within the jurisdiction, subject to the agreement required
7 pursuant to Section 43212.1 or 43310.1." (Emphasis added.) That is, under Section 43202, the
8 CIWMB must act as EA within an area only in the absence of a certified LEA for that area. In this
9 case, it is not disputed that the County LEA and the City LEA have been designated and certified
10 as EAs within their respective jurisdictions and that the Landfills at Sunshine Canyon are identified
11 in their respective EPPs. Therefore, the CIWMB is not required to act as the EA anywhere within
12 the jurisdictions of the City LEA or the County LEA, including at Sunshine Canyon.

13 In addition, section 18081 (e) of the CCR states: "All LEA's shall retain their
14 certification(s) and designation approvals by maintaining compliance with their board-approved
15 EPP and this Chapter." As it is undisputed that the City LEA and the County LEA are in
16 compliance with their requirements as EAs under the California Integrated Waste Management Act
17 and related regulations in the CCR, including with their EPPs approved by the CIWMB and the
18 performance standards under PRC Section 43214. The law therefore requires that the CIWMB
19 respect the status of the City LEA and the County LEA as the designated, certified and approved
20 EAs for Sunshine Canyon.

21 **B. The CIWMB Cannot Act as EA Until It Obtains Agreements With the**
22 **Governing Bodies of the City and the County:**

23 Before the CIWMB is able to legally assume the role as EA of the Sunshine Canyon
24 Landfills, the CIWMB must first obtain from the Los Angeles County Board of Supervisors and
25 the Los Angeles City Council agreements required of the CIWMB pursuant to PRC Section
26 43212.1 or 43310.1, which agreements have not yet been obtained.

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1 **C. The CIWMB Cannot Replace the City LEA or the County LEA at Sunshine**
2 **Canyon Without Meeting the Due Process Requirements Required by the California Code of**
3 **Regulations:**

4 Section 18085 of the California Code of Regulations provides the grounds which would
5 enable the CIWMB to take action against the County LEA or the City LEA. These grounds
6 include failure to meet the performance standards of PRC 43214, failure to meet the certification
7 requirements of 14 CCR 18072-75, and failure to fulfill duties and responsibilities of an LEA
8 outlined in PRC Section 43209. No such ground exists to take away the authority of the County
9 LEA in regulating the County Landfill or to prevent the City LEA in regulating the City Landfill.
10 The fact that BFI desires to merge its operations at the Landfills does not change the regulatory
11 requirements that BFI would have to meet to protect local health and safety. The forming of a new
12 SCL-LEA is entirely voluntary on the part of the City and the County and BFI's desire to expedite a
13 Combined SWF Permit should not be used by the CIWMB to strip the County LEA or the City
14 LEA of their authority to regulate the Landfills within their respective jurisdictions.

15 To legally assume the authority or responsibilities of a certified LEA, the CIWMB must
16 follow its obligations and procedures under the CCR. Section 18086 of Title 14 of the CCR states
17 that if the CIWMB finds that an LEA is not fulfilling its responsibilities, as when the CIWMB
18 states that the City LEA and the County LEA failed to provide a mechanism for processing a
19 Combined SWF Permit to which BFI is entitled, the CIWMB may, among other things, " . . .
20 assume responsibility for specified LEA duties by partially or fully decertifying an LEA . . .".
21 (Emphasis added.) However, before the CIWMB takes said action against an LEA, Section 18087
22 of Title 14 of the CCR requires notice to the LEA, a public hearing, admission of evidence, and
23 formal final action by the CIWMB against the LEA.

24 Consequently, to insert itself legally as the EA to regulate the Sunshine Canyon Landfills,
25 the CIWMB must first find grounds against the County LEA and the City LEA under 14 CCR
26 18085 and subsequently take the steps required of it by 14 CCR 18086. As the CIWMB has not
27 established grounds to de-certify or replace either the County LEA or the City LEA; and since the
28 CIWMB has failed to provide the requisite notice, conduct necessary hearings, or take final action

1 as required by 14 CCR 18087, the CIWMB cannot assume the role of EA at Sunshine Canyon.

2 **D. The County LEA and the City LEA Have the Exclusive Authority to Act As**
3 **Enforcement Agencies and to Accept Applications For Solid Waste Facilities Permits Within**
4 **Their Respective Jurisdictions:**

5 Under PRC Section 43209, the City LEA has the exclusive authority to act as EA within its
6 boundaries, including within the City Landfill area. Therefore, during the time the City LEA
7 remains certified and in good standing as a local enforcement agency, the CIWMB lacks authority
8 to act as EA within the territorial boundaries of the City, including within the City Landfill area.
9 The CIWMB's decision to process an application for a permit affecting the City Landfill is
10 therefore unlawful. The same holds true for the County Landfill area during the time the County
11 LEA remains certified and in good standing.

12 Section 21570 of Title 27 of the CCR requires all applicants to a solid waste facilities
13 permit to submit their application to the "EA", as set forth in that provision. Section 20164 of Title
14 27 of the CCR defines "EA" as " . . . [an] enforcement agency as defined in PRC § 40130." PRC
15 Section 40130 defines "Enforcement Agency" as " . . . the local agency designated pursuant to . .
16 .[PRC Section 43200, *et. seq.*] . . . (Emphasis added.) Therefore, by definition, if a local agency
17 such as the City's Environmental Affairs Department or the County of Los Angeles Solid Waste
18 Management Program has been designated as LEA, only that agency can legally process permit
19 applications within its jurisdiction. Under PRC Section 40130, the CIWMB could only accept
20 permit applications affecting Sunshine Canyon if no LEA had been designated for that area.

21 In this case, as the County LEA and City LEA have been designated and certified as LEAs
22 for Sunshine Canyon, under PRC 40130, only they are authorized to accept BFI's application for a
23 new solid waste facilities permit at Sunshine Canyon. Moreover, as seen above, the CIWMB is
24 precluded from accepting the permit from BFI application for Sunshine Canyon also under Section
25 21570 of Title 27 of the CCR.

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1 **E. BFI's claims of land use approvals by the City and the County for "merged**
2 **operations" do not impose a mandatory duty upon the CIWMB under PRC Section 43202 to**
3 **replace the County LEA as the enforcement agency within the County Landfill:**

4 The County and the City have informed the CIWMB that BFI has not yet obtained final
5 land-use approvals that would allow the Merged Operation at the Landfills as BFI has yet to fulfill
6 the Land Use Conditions of the County CUP and the City Zoning Amendment. Moreover, as the
7 1-17 Rauh Ltr. explains, the CIWMB does not dispute that it has no standing to challenge or
8 contradict the City or the County's determinations that BFI lacks final land-use approvals under the
9 County CUP and the City Zoning Amendment. In particular, the 1-17 Rauh Ltr. states: ". . .nor
10 have we the authority to interpret . . . locally-imposed land use conditions." [1-17 Rauh Ltr., p. 3;
11 See PRC Section 42203, which states: "Nothing in this section shall be interpreted to limit the
12 authority of local governments to make land use decisions within their jurisdictions."]

13 Yet, the determining factor for the CIWMB to assert that the CIWMB is obligated to
14 assume the role of enforcement agency for the merged operation is that the . . ."operator has gone
15 through all of the hurdles of obtaining local jurisdictional [land-use] consent for formation [of the
16 merged operation]. . .". [Rauh Ltr., p. 5]. More particularly, staff of the CIWMB relies on the
17 determination that BFI met all local land-use conditions to state that these approvals are creating an
18 "enforcement agency void" which in turn trigger CIWMB's *mandatory duty* to replace the existing
19 County LEA and the City LEA as enforcement agencies at Sunshine Canyon. Staff states: "This
20 'enforcement agency void' is precisely what the Board [CIWMB] is obliged to fill [under PRC
21 Section 43202] unless and until a local designation is made and approved by the Board." In reality,
22 until the City and the County in fact determine that the land-use approvals allow for a merged
23 operation to commence, the CIWMB cannot claim that any enforcement agency void exists.

24 **F. The City and the County Are Working Diligently To Create a Joint LEA For**
25 **the Combined Operation: No Impasse Exists:**

26 In addition, the CIWMB explains in the 1-17 Rauh Ltr. that because the City and the
27 County have reached an "impasse" in their attempt to designate an LEA for the merged landfill, the
28 CIWMB is now obligated to fill the resulting "enforcement agency void" in order to allow

1 immediate processing of the application for a Combined SWF Permit in favor of BFI. As stated
2 above, the formation and designation of the SCL-LEA is well under way and the JPA is scheduled
3 for a vote of the Los Angeles City Council on April 25, 2008 and of the Los Angeles County Board
4 of Supervisors on May 6, 2008.

5 **G. The CIWMBs Efforts To Take the Place of the City LEA and the County LEA**
6 **at Sunshine Canyon Run Against the Public Policies of the Integrated Waste Management**
7 **Act to Work With and Through Local Agencies:**

8 PRC Section 40002 states:

9 As an essential part of the state's comprehensive program for solid waste management, and
10 for the preservation of health and safety, and the well-being of the public, the Legislature
11 declares that it is in the public interest for the state, as sovereign, to authorize and require
12 local agencies, as subdivisions of the state, to make adequate provision for solid waste
13 handling, both within their respective jurisdictions and in response to regional needs
14 consistent with the policies, standards, and requirements of this division and all regulations
15 adopted pursuant to this division. The provisions of this division which authorize and
16 require local agencies to provide adequate solid waste handling and services, and the
17 actions of local agencies taken pursuant thereto, are intended to implement this state policy.

18 The Courts also find that the CIWMB must work with local governmental agencies in
19 implementing the California Integrated Waste Management Act. In San Elijo Ranch v. County of
20 San Diego, 65 Cal. App. 4th 608, the Court states:

21 The Waste Act contains specific provisions applicable only to local agencies like the City.
22 The Waste Act expressly provides that 'the responsibility for solid waste management is a
23 shared responsibility between the state and local governments' [Citing PRC § 40001, subd.
24 (a)], and that local governmental responsibilities 'are integral to the successful
25 implementation' of the Waste Act. [Citing PRC § 40703.] The Waste Act directs the Waste
26 Board to consult and coordinate with local governmental agencies. [Citing PRC §§ 40703,
27 43301, 43307, 40910, 41791.2, 42500, 42501, 42511, 42540, 42600, 42650, 43217, 42003,
28 47103.]

The Waste Act does not stop at merely compelling the Waste Board to coordinate its
activities with state and local governments. Section 40053 provides that the Waste Act
does not limit "... the power of a city, ... to impose and enforce reasonable land use
conditions or restrictions on solid waste management facilities in order to prevent or
mitigate potential nuisances" Section 41851 provides that "[n]othing in this chapter
shall infringe on the existing authority of . . . cities to control land use or to make land use
decisions" [Citing PRC §§ 42023, 43208.]

San Elijo Ranch v. County of San Diego, Id., at 614.

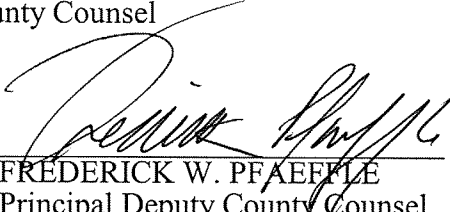
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1 order the CIWMB to refer the matter to the SCL-LEA which the City and the County are in process
2 of forming and certifying. Alternatively, the Hearing Panel's order should direct the CIWMB to
3 deem BFI's application as incomplete and refer the application back to BFI to address deficiencies
4 raised by the City LEA and the County LEA in comments provided to the CIWMB.

5
6 DATED: April 23, 2008

Respectfully submitted,

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8 County Counsel

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13 DATED: April 23, 2008

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DATED: April 23, 2008

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